

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE APPLICATION )  
 )  
NUMBER E2414 (55-Area) )

MEMORANDUM DECISION

Exchange Application Number E2414 (55-Area) was filed by North Fork Special Service District on January 30, 1986, requesting permission to exchange 23.32 acre-feet of water as evidenced by deeded portions of Water Right Numbers 55-11052, 55-11055, 55-11062, and 55-11069, Provo River Decree, Civil No. 2888, Paragraphs 22(p), 22(s), 22(z), and 22(ag) respectively. Heretofore, the water was diverted from the Provo River into the Lake Bottom Canal at a point South 1944 feet and East 511 feet from the N1/4 Corner of Section 25, T6S, R2E, SLB&M. The water was used for the irrigation of 5.83 acres of land and for stockwatering and domestic purposes.

Hereafter, it is proposed to divert the water year-round from 15 springs located in the North Fork of Provo Canyon and from the North Fork of Provo Canyon stream. The water will be used year-round for domestic, recreation, commercial, and stockwatering purposes within the North Fork Special Service District. In exchange for the water withdrawn from the springs and the stream, 23.32 acre-feet of water would not be diverted at the Lake Bottom Canal diversion point so that water rights on the Provo River system will not be impaired.

The exchange application was advertised in the Daily Herald from August 28, 1986, to September 11, 1986. Protests were filed by Central Utah Water Conservancy District, Salt Lake City Corporation, Utah Power and Light Company, Brickerhaven Corporation, Provo River Water Users' Association, and the Bureau of Reclamation.

A hearing was held March 3, 1987, at the Utah County Courthouse, Provo, Utah.

A representative for the applicant did not appear at the hearing proceedings.

Representatives for the protestants agreed to have one spokesman speak on their behalf. The protestants' spokesman stated three procedural points the applicant had not satisfied: first, the applicant did not appear at the hearing; second, the application should have been a change application; and third, the application should have been in the name of Lake Bottom Canal Company. The protestant's spokesman went on to state that the exchange was based on irrigation rights and approval of the exchange would constitute an enlargement of the decreed right. Hence, if an exchange is allowed, it should be limited to the irrigation season. Since the heretofore diversion of the Lake Bottom Canal allowed return flows to re-enter the system, any application no matter how small that increased the consumptive use of Provo River water over its heretofore use would adversely impact the protestants' water rights. A representative for the Bureau of Reclamation added that the exchange would diminish the base flows the Bureau is required to maintain for a fishery. A representative for Salt Lake City stated that the exchange would adversely impact the City's water rights in Utah Lake.

The State Engineer has reviewed the exchange application, the water rights involved, the Provo River Decree, the hydrologic regimen of the Provo River system, and the protests. He has determined the following:

- a. The water rights on which the exchange application is based are not shares in the Lake Bottom Canal Company, but rather individual awards in the Provo River Decree with water being delivered through the Lake Bottom Canal.
- b. It is acknowledged by the State Engineer that a change application, rather than an exchange, is probably more appropriate; however, the exchange application adequately sets forth the applicant's intent and the application was given proper public notice. The deficiency of no proof of permanent change being required can be mitigated by the State Engineer requiring the applicant to submit detailed information regarding completion of development as is provided for in Section 73-3-20, Utah Code Annotated, as amended 1985.
- c. Although the Provo River Decree provides for winter use of water for domestic and stockwatering purposes, the extent of these uses are not identified under the water rights on which the exchange application is based. Hence, the State Engineer must consider the subjects rights to be only irrigation rights, and to allow the diversion of water under the exchange application during the non-irrigation season from sources directly tributary to the Provo River would impair existing water rights on the Provo River and Utah Lake.
- d. Exchange Application Number 2414 (55-Area) supercedes part of approved Exchange Application Number E225 (55-Area) and all of unapproved Exchange Application Number E249 (55-Area). Furthermore, approved Exchange Application E2189 (55-Area) supercedes the remainder of Exchange Application Number E225 (55-Area).

It is the opinion of the State Engineer that the exchange application can be approved if certain conditions are imposed.

It is, therefore, ORDERED and Exchange Application Number E2414 (55-Area) is hereby APPROVED subject to all prior rights and the following conditions:

1. There shall be no diversion of water under the exchange application during the non-irrigation season.
2. That the total diversion during the irrigation season shall not exceed 23.32 acre-feet.
3. That the applicant shall divert from Brickerhaven Spring (located South 3004 feet and West 3988 feet from the NE Corner of Section 15, T5S, R3E, SLB&M) only that water which is in excess of the Brinkerhaven Corporation's right.
4. That approval of the exchange application in no way grants the applicant any right to disturb the diverting and conveying works of Brickerhaven Corporation without its permission.

5. That if the Olmsted Power Plant should resume operation, the applicant shall arrange with the power producer to pay any required compensation for loss of power generation.
6. That the applicant shall install a permanent totalizing water meter on its water system to measure the water diverted from all sources and the meter shall be available for inspection by the State Engineer and at all reasonable times as may be required by the duly appointed Provo River Commissioner in regulating this exchange application. The total quantity of water diverted annually as evidenced by the this totalizing meter shall be reported by the Provo River Commissioner in his annual report to the State Engineer.
7. That any additional costs incurred by the Provo River Commissioner in the administration of this exchange application shall be borne by the applicant. The amount of such costs shall be determined by the River Commissioner and/or the State Engineer.
8. That on, or before, November 30, 1992, the applicant shall submit a detailed report to the State Engineer as provided by Section 73-3-20, Utah Code Annotated, 1953, as amended 1985, substantiating that the exchange has been fully implemented. The report shall be prepared by a reputable registered land surveyor or engineer who shall use as a guideline the requirements for preparation of a proof of appropriation or change as set forth in Section 73-3-16, Utah Code Annotated, 1953. If the exchange is not fully implemented by November 30, 1992, the applicant shall make a written request to the State Engineer for an extension of time.
9. That the applications identified in the Division of Water Rights as Exchange Application Numbers E225 (55-Area) and E249 (55-Area) shall be withdrawn by the applicant within 30 days of the date of this Memorandum Decision.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate District Court within 60 days from the date hereof.

Dated this 5th day of June, 1990.

  
Robert L. Morgan, P.E., State Engineer

RLM:EDF:ap

Mailed a copy of the foregoing Memorandum Decision this 5th day of June, 1990  
to:

MEMORANDUM DECISION,  
EXCHANGE APPLICATION  
NUMBER E2414 (55 AREA)  
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By:

  
Robin Campbell, Secretary